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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/037,457	12/31/2001	Michael T. Morman	KCC 4845 (KC# 16,984)	4817
7590 07/21/2005 Senniger, Powers, Leavitt & Roedel One Metropolitan Square, 16th Floor St. Louis, MO 63102			EXAMINER REICHLE, KARIN M	
			ART UNIT 3761	PAPER NUMBER
DATE MAILED: 07/21/2005				

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/037,457

Applicant(s)

MORMAN ET AL.

Examiner

Karin M. Reichle

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3761

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 29 April 2005.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 45,46,50-68,76-85 and 88-98 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 45,46,50-68,76-85, and 88-98 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- ☒ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____
- ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____
- ☐ Notice of Informal Patent Application (PTO-152)
- ☐ Other: _____

DETAILED ACTION

Continued Examination Under 37 CFR 1.114

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 4-29-05 has been entered.

Specification

2. The lengthy specification has not been checked to the extent necessary to determine the presence of all possible minor errors. Applicant's cooperation is requested in correcting any errors of which applicant may become aware in the specification.

For example:

Description

3. The disclosure is objected to because of the following informalities: 1) The Summary of the Invention section, i.e. a description of the claimed invention, and the invention of the claims are not commensurate, see MPEP 608.01(d) and 1302.01. Applicant's remarks with respect to such have been noted. 2) On page 6, lines 15-20, Applicant defines the terminology "affixed" as including both direct and indirect affixing. Therefore, if a portion of a first structure is "affixed" to a second structure, the entire first structure is "affixed" because its entirety is

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either directly or indirectly joined to the second structure. Therefore, the first structure is either entirely affixed or not affixed at all as “affixed” is defined. Therefore it is unclear how the absorbent body is “affixed”, i.e. secured, along “at least a portion” or “at least in part” as claimed in the claims, specifically 66, 68, 88 and 95-98. Also note page 31, lines 8 et seq of the description. Therefore, a clear consistent description of “affixed” should be set forth throughout the description and claims. See also the Response to Arguments section infra.

Appropriate correction is required.

Claim Rejections - 35 USC § 112

4. Claims 45-46, 50-68, 76-85 and 88-98 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

As already discussed supra, due to the definition of “affixed” and like terms on page 6, and the terminology “at least a portion” or “at least in part” in all the claims, it is unclear what the structure defined by the terminology “affixed” is. See also the Response to Arguments section, infra.

Claim Language Interpretation

5. The terminology of the claims is interpreted in light of the definitions set forth on pages 3-8. Due to the lack of clarity with regard to the terminology “affixed”, see discussion supra, any amount of affixment will be interpreted as meeting the terms of the claims. It is noted that on page 31, direct surface attachment of between about 25% and 95% has not been

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patentably distinguished, i.e. described as being critical, from direct surface attachment of less than about 95%.

Claim Rejections - 35 USC § 102

6. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

7. Claims 45-46, 50-54, 56-65, 88-92 and 95-98 are rejected under 35 U.S.C. 102(b) as being anticipated by Stevens '598.

Claim 95: See Figures, especially Figures 3A, and 19A-19C, the stretchable chassis is 12, see claim 4, and the discussion of claims 50-54 *infra*, an absorbent body 32 which is affixed, directly or indirectly, along a portion of its outer surface to the inner surface of the chassis at 46, 48, and 50, see col. 6, lines 9-24 and 30-35 and the Claim Language Interpretation section *supra*, and the surface 34 thereof lies against the wearer during use, see Figures. It is the Examiner's first position that the reference teaches the chassis is stretchable independent of the absorbent body, see, e.g., col. 6, lines 13-18. In any case, the Examiner's second position, the Stevens reference teaches all the claimed structure. Claim 95, last two lines defines properties, capabilities and function of such claimed structure. Therefore there is sufficient factual basis to conclude such properties, functions and capabilities are also inherently present in the same structure of Stevens. See MPEP 2112.01. As seen in Figures 3A and 19A-19C, the inner surface of the absorbent body is free from contact with the chassis at the longitudinal ends of such body.

Claim 45: see col. 5, lines 23-25.

Claim 46: see points 46, 48 and 50 in Figures.

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Claims 50-54: see col. 14, line 15-col. 18, line 19 of Stevens, and thereby Van der Wielen '415 and Morman '802, e.g., col. 27, lines 20-31 of '802, the chassis can be multiple layers of gathered, i.e. extensible, material and elastic material (it is noted that the claims do not limit each of the cover and liner to one layer only), i.e. each of the cover and liner can be a gatherable or extensible layer or an elastic layer or a combination of at least one extensible layer and one elastic layer and, e.g., Van der Wielen et al '415 at col. 12, lines 12-15, i.e. all the layers of the chassis can be elastic.

Claims 56-58: see col. 10, lines 45-50 of Stevens.

Claims 59-62: see portions cited with respect to claims 50-54, especially '802 at the paragraph bridging cols. 19-20 and col. 14, line 26-col 16, line 12, and '598 at col. 17, line 33-col. 18, line 1, i.e. the cover can be a polypropylene spunbond gatherable layer laminated with an adhesive or tacky elastic layer of SIS, and col. 10, line 60-col. 14, line 14 of Stevens, i.e. a thermoplastic nonwoven web of multi-block elastomeric copolymers.

Claims 63-65: see col. 5, lines 59-61 and col. 6, lines 1- 8 and col. 1, lines 15-21, and thereby '172 at col. 7, lines 12-16.

Claims 91-92: see col. 1, lines 15-21, and thereby '172, Figures, elements 58 and 60, and discussion of scope of claim language with respect to claims 93-94 infra which also applies here or discussion of claims 50-54 supra, i.e. the chassis can be formed from a multiple of elastic layers, which layers form the waist and leg openings, i.e. can be considered at least one waist elastic member or one leg elastic member. It is noted that the claims do not require members of specific dimensions.

Claims 88-90: see discussion of claims 91-92 and 95, supra.

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Claims 96-98: see discussion of claim 95 supra.

8. Claims 88-90 are rejected under 35 U.S.C. 102(b) as being anticipated by Stevens '709.

See discussion of claims 66, 93-94 infra. It is noted that for this rejection the absorbent body is considered to include liner 42. Also, with regard to lines 14-15 of claim 88, it is the Examiner's first position that the reference teaches the chassis is stretchable independent of the absorbent body, see, e.g., col. 7, lines 5-7 and 20-25 and col. 4, lines 32-48. In any case, the Examiner's second position, the Stevens reference teaches all the claimed structure. Claim 88, lines 14-15 define properties, capabilities and function of such claimed structure. Therefore there is sufficient factual basis to conclude such properties, functions and capabilities are also inherently present in the same structure of Stevens. See MPEP 2112.01.

Claim Rejections - 35 USC § 103

9. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

10. Claims 66-68, 76-85, and 93-94 are rejected under 35 U.S.C. 103(a) as being unpatentable over Stevens '709 in view of Vogt '638 and Bishop et al '166.

Claim 66: See Figures, the stretchable chassis is 20, see col. 4, lines 15-31, col. 17, line 10-col. 21, line 14, and thereby Van der Wielen '415 and Morman '802, e.g., col. 27, lines 20-31 of '802, the chassis can be multiple layers of gathered, i.e. extensible, material and elastic material (it is noted that the claims do not limit each of the cover and liner to one layer only), i.e. each of the cover and liner can be a gatherable or extensible layer or an elastic layer or a

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combination of at least one extensible layer and one elastic layer and, e.g., Van der Wielen et al '415 at col. 12, lines 12-15, i.e. all the layers of the chassis can be elastic, the absorbent body is 22, i.e. wrapsheet 43, 44, and core 38, absorbent body liner is 42 which is affixed at 50 and/or 45, see col. 7, lines 20-25 and the Claim Language Interpretation section *supra*, and the surface 42 thereof lies against the wearer during use, see Figures. The Stevens device includes all the claimed structure except for a surge layer and its location. See, e.g., col. 3, lines 59-61 of Stevens, i.e. desires prevention of leakage. See also element 78 in the Figures of Vogt which is a surge layer and col. 3, lines 12-36 of Bishop. To employ a surge layer and one in the claimed location as taught by Vogt and Bishop on the Stevens device would be obvious to one of ordinary skill in the art in view of the recognition that such would aid in the prevention of leakage and the desirability of leak prevention by Stevens. It is noted that the inner surface of the absorbent body is free from contact with the chassis at the longitudinal ends because it is overlaid by the liner 42.

Claim 67: see points 45 in Figures.

Claim 76: Applicant claims the chassis liner being a neck stretched spunbond web which Stevens does not teach. However, see col. 21, lines 62 et seq of Stevens and col. 7, line 54-col. 8, line 5 and col. 8, lines 21-51 of Vogt, i.e. at the very least teaches a resiliently stretchable cover or chassis can be either a stretch-bonded laminate or a laminate in which the inner layer is a neck-stretched spunbond web. Therefore to make the resiliently stretchable stretchbonded laminate of the chassis or cover of Stevens a cover or chassis of an elastic laminate in which the inner layer is a neck stretched spun bond web would be obvious in view of the interchangeability as taught by Vogt.

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Claims 77-79: see col. 13, lines 42-45 of Stevens.

Claims 80-83: see portions cited with respect to claims 50-54, especially '802 at the paragraph bridging cols. 19-20 and col. 14, line 26-col 16, line 12, and '709 at col. 20, line 28-col. 21, line 14, i.e. the cover can be a polypropylene spunbond gatherable layer laminated with an adhesive or tacky elastic layer of SIS, and col. 13, line 54-col. 17, line 9 of Stevens, i.e. a thermoplastic nonwoven web of multi-block elastomeric copolymers.

Claim 84: It is noted that the terminology "low stretch" is relative absent claiming of specific dimensions of stretchability and thereby, at least one of the materials of the absorbent body is considered "low stretch material".

Claim 85: see col. 22, line 1-col. 24, line 34.

Claims 93-94: see elements 58 and 62 which lie between a portion of the liner and outer cover. It is noted that the claims do not require the member contacting the outer cover and liner simultaneously.

11. Claim 55 is rejected under 35 U.S.C. 103(a) as being unpatentable over Stevens '598 as applied to claim 50, and further in view of Vogt '638.

Applicant claims the chassis liner being a neck stretched spunbond web which Stevens does not teach. However, see col. 19, lines 9-13 of Stevens and col. 7, line 54-col. 8, line 5 and col. 8, lines 21-51 of Vogt, i.e. at the very least teaches a resiliently stretchable cover or chassis can be either a stretch-bonded laminate or a laminate in which the inner layer is a neck-stretched spunbond web. Therefore to make the resiliently stretchable stretchbonded laminate of the chassis or cover of Stevens a cover or chassis of a elastic laminate in which the inner layer is a

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neck stretched spun bond web would be obvious in view of the interchangeability as taught by Vogt.

Response to Arguments

12. Applicant's arguments have been considered but are either deemed moot in that the issue has not been reraised or is deemed not persuasive for the reasons set forth supra. It is noted again that the claimed range of affixment has not been distinguished from the range of less than 95%. Applicant's attention is also drawn to *In re Aller*, 103 USPQ 233, i.e. where general conditions are disclosed in the prior art, i.e. movement unrestricted between body and chassis, discovering the optimum or workable ranges involves only routine skill in the art. Applicant's arguments on pages 12-15 have been considered but are deemed not persuasive because they are narrower than the specification, e.g. at page 13, lines 8-13 of the remarks because the definition of "affixed" is does not limit indirect affixment to elements affixed directly to an, i.e. one, intermediate element and at page 15, lines 20-22 because the specification as a whole does not preclude a portion of the absorbent body being directly unaffixed while another portion is directly affixed, and narrower than the rejection, e.g. at the paragraph bridging pages 14-15 because Examiner's citation to the definition of "affixed" is support.

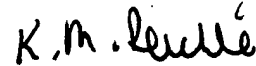
Conclusion

13. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Karin M. Reichle whose telephone number is (571) 272-4936. The examiner can normally be reached on Monday-Thursday.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Tanya Zalukaeva can be reached on (571) 272-1115. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).


Karin M. Reichle
Primary Examiner
Art Unit 3761

KMR
July 16, 2005